

**Table 2**  
**Effect of Overlapping and**  
**Congressional ReAllocation of Usable Space on**  
**Presumptive Pole Estimates**

	<b>Existing Presumptions</b>	<b>Adjusted Presumptions</b>
<b>Pole Height</b>	<b>37.5</b>	<b>44.5</b>
<b>Usable Space</b>	<b>13.5</b>	<b>20.5</b>
- <i>Allocated to Electric</i>	<i>7.0</i>	<i>4.5</i>
- <i>Allocated to Cable</i>	<i>1.0</i>	<i>.25</i>
- <i>Allocated to Telecommunications</i>	<i>5.5</i>	<i>15.75</i>
<b>Other-than-Usable Space</b>	<b>24.0</b>	<b>24.0</b>
<b>Share of usable space per cable attachment</b>	<b>7.4%</b>	<b>1.2%</b>
<b>Share of usable space per telecommunications attachment</b>	<b>13.6%</b>	<b>5.2%</b>

**B. Pole Height**

MCI urges the Commission to reject electric company recommendations to raise the presumptive height required for ground clearance from 18 feet to 19.7 feet, and transferring the electrical safety space from usable electric space to other-than-usable space. The NESC does not uniformly require 18 feet of ground clearance. Some ground clearance requirements are above 18 feet, and some are below. The 18 feet of presumptive ground clearance continues to represent the average minimum ground clearance. In addition, the Commission has explicitly ruled that the safety space is properly allocated to usable electric space.

Many 30 foot poles are capable of carrying electric and telecommunications cables. There

are also many 30 foot poles that carry only street lights, or are used exclusively by ILECs, that are capable of telecommunications attachments. If the Commission excludes the lower net investment costs associated with these poles from its pole attachment formula, rates will be set unreasonably and unjustifiably above costs.

#### C. Pole Formula

In light of the possible difficulty removing negative net salvage values from electric and telephone regulatory accounts, MCI recommends the Commission retain its existing pole attachment rate-setting formula. The Commission's pole attachment rate formula will never result in negative pole attachment rates. At the moment net pole investment becomes negative, the pole maintenance rate and carrying charge rate turn negative, offsetting the negative pole investment amount, always producing a positive rate.

The gross book method fails to meet the criteria of an acceptable rate-making formula. Annual charges continue to increase as pole plant becomes depreciated, even after it is fully depreciated. Annual charges far exceed ongoing maintenance costs after plant is fully depreciated. The Commission should not utilize the gross book value adjustment method, even if it finds removing net salvage is too expensive and administratively burdensome. The Commission's existing formula is more appropriate and is even less administratively burdensome than moving to a gross book adjustment method.

#### D. Transmission Facility Formula

It is feasible and necessary for new telecommunications entrants to gain access to electric utility company transmission facilities. Consequently, the Commission must ensure that just and reasonable rates for attaching to electric transmission facilities are available to attachees. MCI

recommends the Commission modify its current pole attachment formula in order to determine the maximum rate for attaching to electric company transmission facilities. Until the Commission determines a presumptively accurate amount of total usable space on a typical transmission tower and adjustment factor to eliminate non-pole related investments, the Commission should require electric utility companies to apply the pole attachment formula to their transmission facilities. This will require them to estimate average usable and non-usable space, the adjustment factor appropriate for transmission facilities, and use appropriate FERC transmission facility investment and expense accounts to estimate transmission facility maintenance carrying rates, transmission facility depreciation carrying rates factors, and net transmission facility investment.

**E. Conduit Formula**

The Commission should limit inclusion of conduit costs to FERC Accounts (and their USOA equivalents) identified in Attachment 1 of MCI's Reply Comments in the companion pole attachment proceeding.<sup>39</sup> The Commission should set the average number of channels reserved per conduit system or trench equal to "one" (1). Each conduit system or trench requires one maintenance channel. Since this maintenance channel is only made available for temporary uses, there is no need to presume that more than one channel should be reserved for maintenance in any conduit system or trench.

Finally, MCI recommends the Commission adopt "three and one-half" (3.5) as the presumptive number of innerducts that can be pulled per duct. Typically, ducts are 4 inches in diameter, and are able to contain three (3), 1.5 inch innerducts, or with the introduction of fiber

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<sup>39</sup>MCI Reply Comments Amendment of Rules and Policies Governing Pole Attachments, CS Docket No 97-98, Attachment 1.

optic technology, four (4), 1 inch innerducts. The continued development of fiber technology will no doubt increase the sharing possibilities in the future. Consequently, 3.5 innerducts is a reasonable presumptive average.

**VI. Access to Private Rights of Way Does Not Presently Require Rate Regulation**

**A. Utility Companies are Unable to Exercise Market Power with Regard to Private Rights of Way they Control**

In its Notice, the Commission seeks comment on whether unresolvable rights-of-way disputes will be so extensive that it must develop a generic rate methodology akin to its pole, and conduit attachment formulae.<sup>40</sup> As MCI discussed extensively in its Reply Comments, the market for attachments primarily deals with access to public rights of way.<sup>41</sup> New telecommunications entrants face a supply of distribution poles and conduits that are controlled by two or three sources. While incumbent utility companies do own their own rights of way, or obtain easements to the privately owned rights of way of non-utilities, it is not clear that incumbent utilities are in a position to exercise market power with regard to private rights of way generally. Consequently, MCI does not believe the Commission must adopt rules establishing a generally applicable rate methodology for attachments to private rights-of-way.

**B. Rulings Ensuring Non-Discriminatory Access to Private Rights-of-Way Are Needed**

MCI has experienced difficulty in one area of gaining access to private rights-of-way. Very often an incumbent utility has gained an easement to a non-utility private right of way. When MCI or other new entrants approach the utility company to share this easement, we are told

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<sup>40</sup>Notice at 16.

<sup>41</sup>MCI Reply Comments, CS 97-98 at 6.

at times that the utility does not have the authority to share this easement with MCI. The Commission should affirm its decision in CC Docket 96-98 requiring utility companies to exercise their rights of eminent domain to expand an existing right-of-way over private property to cable companies and non-incumbent telecommunications carriers.<sup>42</sup>

## **VII. Transition**

In its Notice, the Commission seeks comment on its proposal to phase in any rate increases that might result from telecommunications carriers moving from rates based on §224(d) to rates based on §224(e), equally over a 5 year period, beginning February 8, 2001.<sup>43</sup> MCI recommends the Commission clarify that the 5 year phase-in pertains to any rate increase resulting from the absorption of non-usable costs by telecommunications carriers. The phase-in would apply whether a telecommunications company had already negotiated interim rates pursuant to §224(d), or whether a telecommunications company was negotiating for a first-time attachment pursuant to §224(e).

MCI also requests the Commission to affirm that Congress intended only rate increases to be phased in over time. Congress was concerned that the effect of moving to a permanent rate regulation regime for telecommunications carriers not subject their business plans to immediate, negative harm. Consequently, Congress did not require rate changes to be phased in. Rate

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<sup>42</sup>"Finally, we disagree with those utilities that contend that they should not be forced to exercise their powers of eminent domain to establish new rights-of-way for the benefit of third parties. We believe a utility should be expected to exercise its eminent domain authority to expand an existing right-of-way over private property in order to accommodate a request for access, just as it would be required to modify its poles or conduits to permit attachments." *Local Competition Order* at ¶ 1181.

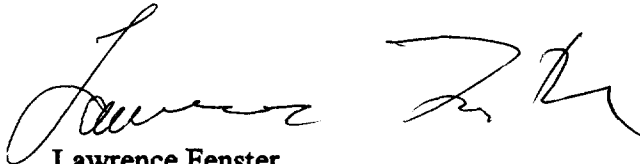
<sup>43</sup>Notice at 17.

reductions that may occur should be immediately implemented.

## **VII. Conclusion**

For the above-mentioned reasons, MCI encourages the Commission to adopt the MCI's recommendations discussed in these comments.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

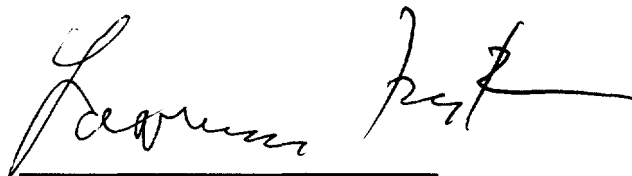
A handwritten signature in black ink, appearing to read 'Lawrence Fenster', followed by a stylized flourish or second signature.

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September 26, 1997

**STATEMENT OF VERIFICATION**

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on June 27, 1997.

A handwritten signature in black ink, appearing to read "Lawrence Fenster", written over a horizontal line.

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## **CERTIFICATE OF SERVICE**

I, Vivian White, do hereby certify that a copy of the foregoing **Comments** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 27th June, 1997.

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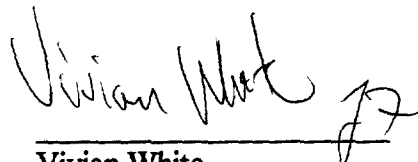
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